FILED
OCT 15 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

NO. 384

INTER-CITY ADVERTISING COMPANY
OF GREENSBORO, N. C., INC. and
INTER-CITY ADVERTISING COMPANY
OF CHARLOTTE, N. C., INC.

Petitioners

vs.

NATIONAL LABOR RELATIONS BOARD

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioners above named respectfully pray this Court for a writ of certiorari directed to the United States Court of Appeals for the Fourth Circuit, to the end that this Court may review a part of the decision which the said Court of Appeals has rendered in the above-entitled case. And the Petitioners respectfully show to the Court:

The Opinion of the Court Below

The decision of the United States Court of Appeals for the Fourth Circuit is reported at 190 F 2d 420.

Jurisdiction of this Court

Jurisdiction to review, through the procedure of certiorari, the decision of the Court of Appeals in this case is conferred upon this Court by the provisions of Title 28, United States Code, Section 1254 (formerly 28 U. S. C. 347) and Title 29, United States Code, Section 160 (Section 10 (e) of the National Labor Relations Act, as amended).

Statement of the Case

The decision of the Court below requires the Petitioners to reinstate certain former employees with back pay and further requires the Petitioners to recognize and deal with the International Brotherhood of Electrical Workers, the Union which is involved in the case, as bargaining agent for certain of the Petitioners' employees. It is only with respect to this latter requirement that the Petitioners seek the review of this Court.

On February 12, 1949, the Union wrote to the Petitioners' General Manager declaring that it represented "the technical employees of Radio Station WAYS" in Charlotte, North Carolina, and that it had accordingly "petitioned the National Labor Relations Board to conduct an election for certification of this unit." On February 17, 1949, the Union again wrote to the Petitioners' General Manager stating that it likewise represented "the technical employees of Radio Station WCOG" in Greensboro, North Carolina.

Upon receiving these letters the Petitioners made no reply to them and did not in any manner recognize or deal with the Union as a bargaining agent. The Court below holds that the Petitioners should have acquiesced in the Union's claims and should have recognized it as bargaining agent without awaiting any hearing or election or any other action or procedure on the part of the Labor Board. The Petitioners explained, however, at the hearing in the present case that they had not acquiesced in the Union's claims for the following reasons.

In the first place, the Union, in its letter of February 12, 1949, relating to the Petitioners' main radio station at Charlotte, North Carolina, did not ask for recognition, did not request collective bargaining and did not call for any reply. The Union merely declared that it represented "the technical employees" and stated that it had "petitioned the National Labor Relations Board to conduct an election for certification of this unit."

In the second place, as the Petitioners' General Manager testified (Appendix to Companies' Brief in Court of Appeals, P. 3), the Petitioners did not know and, except by taking the Union's word for it, had no proper means of ascertaining whether the Union did in truth represent a majority of employees in any given grouping.

Moreover, before recognizing the Union as bargaining agent, there were basic questions, which the Petitioners were entitled to have the Board resolve, as to what was the actual scope of the employee grouping or bargaining unit which the Union was seeking to establish and as to whether such would constitute a proper and appropriate bargaining unit.

As noted above, the Union had declared that it represented "the technical employees" and that it had applied to the Board to conduct an election in such "unit", to the end that it might be certified as bargaining agent for the unit. It was clear that the Union took the position that "the technical employees, at the Charlotte and Greensboro stations respectively should constitute separate bargaining units. The Petitioners considered, however, (Appendix to Companies' Brief in Court of Appeals, P. 3) that any bargaining unit established should include both stations, as well as a third station operated at Columbia, South Carolina.

But even in an individual station the scope and the application of the term "technical employees" was a matter of ambiguity and of varying interpretation. Even the Union's International Representative, though well versed in the arrangements and divisions of personnel in radio stations, admitted at the hearing that he did "not know what the Local Union had in mind by that particular term" (Transcript of Testimony, P. 326). It is agreed on both sides that the term "technical employees" includes all "transmitter" employees and at least some "studio" employees. Whether the duties of all studio employees are such that they are to be regarded as "technical" employees is, however, a matter of genuine conflict of opinion and interpretation, which remains wholly unresolved in this case.

Finally, it is to be especially noted that in a former representation case involving the Petitioners' main radio station at Charlotte, the Labor Board had specifically ruled that an appropriate unit at the Charlotte station should not include both transmitter and studio employees but should consist of transmitter employees only. *Inter-City*

Advertising Company, Inc. and International Brotherhood of Electrical Workers, Local Union No. 1229, A. F. L., NLRB Case No. 5-R-1476. That ruling had been reiterated by the Board in a complaint case involving the Charlotte station, *Inter-City Advertising Company, Inc. and International Brotherhood of Electrical Workers, Local No. 1229, A. F. L.*, 61 NLRB 1377, and had been affirmed by the Court below in *National Labor Relations Board vs. Inter-City Advertising Company, Inc.*, 154 F 2d 244 (C. A. 4th). And at about the time the present case arose the Board again made substantially the same ruling in a case involving another North Carolina radio station. *WPTF Radio Company of Raleigh, N. C. and National Association of Broadcast Engineers and Technicians*, 82 NLRB No. 30.

Yet it is now held that, upon the Union's so suggesting, the Petitioners forthwith should have recognized and acquiesced in a bargaining unit *which earlier the Board and the Court below had specifically ruled to be inappropriate*. In short, the holding below is that the Petitioners should have disregarded the directive formerly issued to them and, without awaiting the procedure and decision of the Board in the new case, should have acquiesced in the bargaining unit which the Union proposed and that the Petitioners are in violation of law for not having done so. All of this seems the more bewildering when it is observed that the procedure and action which the Petitioners were awaiting is called for and required by the provisions of the National Labor Relations Act itself (29 U. S. C., 159 (b) (c)).

Question Involved

Is an employer at liberty to refrain from recognizing a Union as bargaining agent until the Labor Board has

determined bargaining unit and representation issues, when the circumstances are:—that the Union has merely asserted to the employer that it represents employees in an indeterminate grouping and has informed the employer that it has petitioned the Labor Board on the matter; that the employer does not know whom the Union represents and the Union offers no proof on the subject; that the employer does not agree that the bargaining unit named by the Union is appropriate; that the actual scope of the unit proposed by the Union is a matter of conflicting opinion and interpretation; and that the same employer has had an earlier directive from the Board, affirmed by court decision, declaring the unit presently named by the Union to be inappropriate.

Reasons Why Certiorari Should Be Granted

1. This case presents a controversy which is of general importance in the administration of the National Labor Relations Act.

2. The ruling of the Board and the Court below does not represent a reasonable and justifiable application of the Act or the procedures provided by the Act.

3. The Petitioners are held to have violated the Act in failing to recognize the Union at a time when there had been no Labor Board determination of bargaining unit and representation issues and when the Union had itself informed the Petitioners that it was petitioning the Board to determine such matters.

4. The Petitioners are held to have violated the Act in failing to recognize the Union at a time when the Petitioners did not have and had not been offered any proof of representative authority on the part of the Union.

5. The Petitioners are held to have violated the Act in failing to recognize the Union although the Petitioners reasonably disagreed with the Union's assertion that there should be separate bargaining units at the Petitioners' respective radio stations.

6. The Petitioners are held to have violated the Act in failing to recognize the Union although the actual scope of the bargaining unit asserted by the Union was a matter of ambiguity and varying interpretation.

7. The Petitioners are held to have violated the Act in failing to recognize the Union although the unit asserted by the Union was one which the Board and the Court below had specifically ruled to be inappropriate—so that the Petitioners are thus held to have violated the Act *in failing to disregard* a former directive issued to the same Petitioners.

8. The Petitioners are held to have violated the Act by awaiting the very hearing and proceedings which are prescribed and required by the Act itself.

WHEREFORE, the Petitioners earnestly pray the Court to grant certiorari in this case to the end that the bargaining unit and representation issues above referred to may be heard and determined and in order that all the employees, including reinstated employees, who fall within such unit as may be found appropriate, may then decide, by normal secret ballot election, whether the Union shall or shall not represent them.

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